

1 I, DON A. MADDEN, III declare as follows:

2 1. The following facts are personally known to me, and I have first-hand knowledge
3 of the same, or are matters of which the Court may take judicial notice. If called as a witness, I
4 could and would competently testify thereto under oath. I am the President of Movant TROJAN
5 CAPITAL INVESTMENTS, LLC (“**Trojan**”) and I am authorized to make this Declaration.
6 This Declaration is provided in support of Trojan’s Motion for Relief from Stay (**the “Motion”**)
7 filed contemporaneously herewith.

8 2. Trojan is a Wyoming Limited Liability Company active in good standing in
9 Wyoming since February 25, 2014. Trojan has been active and in good standing in California
10 since February 11, 2015.

11 3. Because of my training, management, and work experience at Trojan, I am
12 personally familiar with Trojan’s policies, procedures, and practices concerning the purchase of
13 second trust deeds and notes, the servicing of those loans, engaging in loss mitigation of those
14 loans before starting foreclosure proceedings, and performing foreclosures on second deeds of
15 trust in default. I am also personally familiar with the types or kinds of records prepared by
16 Trojan or its agents in the regular course of purchasing second trust deeds and notes, servicing of
17 those loans, engaging in loss mitigation of those loans before starting foreclosure proceedings,
18 and performing foreclosures on second deeds of trust in default. I am also personally familiar
19 with how those records are prepared, and the information and methods of preparation of those
20 records. Therefore, I act as Custodian of Records for Trojan. The exhibits attached to the Motion
21 that are taken from the business records of Trojan were made at or near the time by or from
22 information transmitted by someone with knowledge, the records are kept in the course of
23 regularly conducted activity of Trojan’s business, and keeping such records is and was a regular
24 practice of Trojan.

25 4. Trojan is the holder of the Note between Michael Joseph Ruffner, as borrower (**the**
26 “**Debtor**”), and National City Bank, as the original lender, dated September 22, 2006 (**the**
27 “**Note**”), having purchased it. Trojan has physical possession of the original Note, which has
28

1 been endorsed to Trojan. A true and correct copy of the Note together with the endorsements
2 thereon is attached to the Motion as **Exhibit “2.”**

3 5. Trojan is the holder of a second priority Deed of Trust (**the “Deed of Trust”**)
4 securing the Note and encumbering the real property located at 4829 Camino Costado, San
5 Clemente, CA 92673 (**the “Property”**). The legal description for the Property is set forth in the
6 Deed of Trust. The Deed of Trust was recorded against the Property on September 29, 2006, as
7 document no. 2006000651011 in the official records of the Orange County Recorder. A true and
8 correct copy of the Deed of Trust is attached to the Motion as **Exhibit “1.”** The Court is also
9 requested to take judicial notice of this document pursuant to FRE 201. The original of the Deed
10 of Trust was delivered to Trojan and is in its possession.

11 6. The Deed of Trust was assigned to Trojan, as reflected in the recorded Corporate
12 Assignment of Deed of Trust attached to the Motion as part of **Exhibit “1.”** The Court is also
13 requested to take judicial notice of these documents pursuant to FRE 201.

14 7. In July 2017, Trojan formally commenced foreclosure proceedings pursuant to its
15 rights under the Note and the Deed of Trust. The original foreclosure sale date was set for
16 November 10, 2017. However, on November 8, 2017, the Debtor commenced the instant
17 bankruptcy case, and therefore, the sale date was postponed.

18 8. I have many years of experience working in the lending industry in California and
19 elsewhere within the United States. I have extensive experience with the documentation process
20 for loans secured by real property in California. I also have extensive experience with purchasing
21 loans secured by real property in California and with the documents utilized to effect the transfer
22 of the loans.

23 9. PNC Bank, N.A., successor by merger to National City Bank, assigned the Deed
24 of Trust to Trinity Financial Services, LLC (“Trinity”). That Assignment of Deed of Trust is
25 recorded as Instrument Number 2014000432263 in the Official Records of the Orange County
26 Recorder.

27
28

1 10. Trinity assigned the Deed of Trust to Trojan. That Corporate Assignment of Deed
2 of Trust is recorded as Instrument Number 2016000395135 in the Official Records of the Orange
3 County Recorder.

4 11. As of the Petition Date, the Debtor had defaulted in his pre-petition payments with
5 respect to the Note.

6 12. The Debtor claims that in 2007, National City Bank offered him a discounted
7 payoff of the Note in the amount of \$95,000. Trojan's documentation establishes that he signed
8 the Note on or about September 22, 2006 for \$172,385.00. The Debtor's alleged payoff letter
9 from National City Bank is dated October 16, 2007. However, the loan files Trojan received for
10 the Note did not reflect a \$95,000 payment made by the Debtor in 2007, or at any other time.

11 13. Had the Debtor paid off the Note in 2007, IRS regulations would have required
12 National City Bank to issue the Debtor a Form 1099-C for cancellation of indebtedness income.
13 National City Bank would also have been required to record a Release or Satisfaction of the Deed
14 of Trust and void the original Note. Trojan submits that the absence of this documentation tends
15 to show that the Debtor did not pay off the Note.

16 14. Trojan reviewed a full title report in connection with its purchase of the Note.
17 Neither National City Bank nor PNC Bank ever released the Deed of Trust recorded against the
18 Property.

19 ///

20 ///

21 ///

22 ///

23 ///

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed this 25th day of January, 2018, at Newport Beach,
3 California.

4
5 
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DON A. MADDEN III

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1851 East First Street, Suite 1550, Santa Ana, California 92705-4067

A true and correct copy of the foregoing document entitled (*specify*):

DECLARATION OF DON A. MADDEN III REPLY IN SUPPORT OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*)

01/26/18, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Brian C Andrews elizabeth@briancandrews.com,
andrewslawgroupinc@gmail.com;r44711@notify.bestcase.com
- Thomas H Casey (TR) msilva@tomcaseylaw.com, thc@trustesolutions.net
- Rafael R Garcia-Salgado rgarcia@bwslaw.com, bantle@bwslaw.com,
rjr-nef@bwslaw.com
- Richard J Reynolds rreynolds@bwslaw.com, psoeffner@bwslaw.com,
tmims@bwslaw.com,rjr-nef@bwslaw.com;fcabezas@bwslaw.com
- Andrew A Smits , kimberly@smits-law.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- Gilbert R Yabes ecfcacb@aldridgeppte.com,
GRY@ecf.inforuptcy.com;gyabes@aldridgeppte.com

Service information continued
on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **01/26/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Michael Joseph Ruffner
4829 Camino Costado
San Clemente, CA 92673

Service information continued
on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 01/26/18, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe A. Smith
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued
on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/26/18 Bernadette C. Antle
Date *Printed Name*

Signature